identical to the original contract, is not treated as an amendment of the contract; and

(iii) An amendment that reduces the term of a contract, or the amount of requirements covered by a contract, is not, in and of itself, material.

(3) *Elective application of 1998 temporary regulations.* For an issue sold on or after January 19, 2001, and before February 15, 2001, an issuer may apply the provisions of §§1.141–7T and 1.141–8T in effect prior to January 19, 2001 (26 CFR part 1, revised April 1, 2000) in whole, but not in part, in lieu of applying §§1.141–7T and 1.141–8T.

(g) *Refunding bonds in general.* Except as otherwise provided in paragraph (h) or (i) of this section, §§1.141–7T and 1.141–8T do not apply to any bonds sold on or after January 19, 2001, to refund a bond to which §§1.141–7T and 1.141–8T do not apply unless—

(1) The refunding bonds are subject to section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602); and

(2)(i) The weighted average maturity of the refunding bonds is longer than—

(A) The weighted average maturity of the refunded bonds; or

(B) In the case of a short-term obligation that the issuer reasonably expects to refund with a long-term financing (such as a bond anticipation note), 120 percent of the weighted average reasonably expected economic life of the facilities financed; or

(ii) A principal purpose for the issuance of the refunding bonds is to make one or more new conduit loans.

(h) *Permissive retroactive application.* Except as provided in §1.141–15(d) or (e) or paragraph (i) of this section, §§1.141–1 through 1.141–6, 1.141–7T through 1.141–8T, 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in §1.150–1(b) may be applied in whole, but not in part to—

(1) Outstanding bonds that are sold before January 19, 2001, and subject to section 141; or

(2) Refunding bonds sold on or after January 19, 2001, that are subject to section 141.

(i) *Permissive application of certain regulations pertaining to output contracts.* Section 1.141–7T(f)(4) and (5) may be applied to any bonds.

[T.D. 8941, 66 FR 4670, Jan. 18, 2001]

§1.141–16 Effective dates for qualified private activity bond provisions.

(a) *Scope.* The effective dates of this section apply for purposes of §§1.142–0 through 1.142–2, 1.144–0 through 1.144–2, 1.147–0 through 1.147–2, and 1.150–4.

(b) *Effective dates.* Except as otherwise provided in this section, the regulations designated in paragraph (a) of this section apply to bonds issued on or after May 16, 1997 (the effective date).

(c) *Permissive application.* The regulations designated in paragraph (a) of this section may be applied in whole, but not in part, to bonds outstanding on the effective date.

[T.D. 8712, 62 FR 2302, Jan. 16, 1997]

§ 1.142–0 Table of contents.

This section lists the captioned paragraphs contained in §§1.142–1 through 1.142–3.

[T.D. 8712, 62 FR 2302, Jan. 16, 1997]

§ 1.142–1 Exempt facility bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(A), an exempt facility bond issued under section 142 may be a qualified bond.

Under section 142(a), an exempt facility bond is any bond issued as a part of an issue using 95 percent or more of the proceeds for certain exempt facilities.

(b) *Scope.* Sections 1.142–0 through 1.142–3 apply for purposes of the rules for exempt facility bonds under section 142, except that, with respect to net proceeds that have been spent, § 1.142–2 does not apply to bonds issued under section 142(d) (relating to bonds issued to provide qualified residential rental projects) and section 142(f) (2) and (4) (relating to bonds issued to provide local furnishing of electric energy or gas).

(c) *Effective dates.* For effective dates of §§ 1.142–0 through 1.142–2, see § 1.141–16.

[T.D. 8712, 62 FR 2302, Jan. 16, 1997]

§ 1.142–2 Remedial actions.

(a) *General rule.* If less than 95 percent of the net proceeds of an exempt facility bond are actually used to provide an exempt facility, and for no other purpose, the issue will be treated as meeting the use of proceeds requirement of section 142(a) if the issue meets the condition of paragraph (b) of this section and the issuer takes the remedial action described in paragraph (c) of this section.

(b) *Reasonable expectations requirement.* The issuer must have reasonably expected on the issue date that 95 percent of the net proceeds of the issue would be used to provide an exempt facility and for no other purpose for the entire term of the bonds (disregarding any redemption provisions). To meet this condition the amount of the issue must have been based on reasonable estimates about the cost of the facility.

(c) *Redemption or defeasance*—(1) *In general.* The requirements of this paragraph (c) are met if all of the nonqualified bonds of the issue are redeemed on the earliest call date after the date on which the failure to properly use the proceeds occurs under paragraph (d) of this section. Proceeds of tax-exempt bonds (other than those described in paragraph (d)(1) of this section) must not be used for this purpose. If the bonds are not redeemed within 90 days of the date on which the failure to properly use proceeds occurs, a defeasance escrow must be established for those bonds within 90 days of that date.

(2) *Notice of defeasance.* The issuer must provide written notice to the Commissioner of the establishment of the defeasance escrow within 90 days of the date the escrow is established.

(3) *Special limitation.* The establishment of a defeasance escrow does not satisfy the requirements of this paragraph (c) if the period between the issue date and the first call date is more than 10½ years.

(4) *Special rule for dispositions of personal property.* For dispositions of personal property exclusively for cash, the requirements of this paragraph (c) are met if the issuer expends the disposition proceeds within 6 months of the date of the disposition to acquire replacement property for the same qualifying purpose of the issue under section 142.

(5) *Definitions.* For purposes of paragraph (c)(4) of this section, *disposition proceeds* means disposition proceeds as defined in § 1.141–12(c).

(d) *When a failure to properly use proceeds occurs*—(1) *Proceeds not spent.* For net proceeds that are not spent, a failure to properly use proceeds occurs on the earlier of the date on which the issuer reasonably determines that the financed facility will not be completed or the date on which the financed facility is placed in service.

(2) *Proceeds spent.* For net proceeds that are spent, a failure to properly use proceeds occurs on the date on which an action is taken that causes the bonds not to be used for the qualifying purpose for which the bonds were issued.

(e) *Nonqualified bonds.* For purposes of this section, the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding bonds are nonqualified bonds. The nonqualified bonds must be determined on a pro rata allocation basis, except that an issuer may treat bonds with longer maturities (determined on